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**LAW COLLEGE DEHRADUN, FACULTY OF UTTARANCHAL UNIVERSITY
NATIONAL MOOT COURT COMPETITION - 2017**

BEFORE THE HON'BLE SUPREME COURT OF INDISTAN

W.P. No. ____/2017

Mr. Hobart (PETITIONER)

v.

Hon'ble Speaker of the Legislative Assembly, Anga Pradesh (RESPONDENT)

WITH

SLP No. ____/2017

Mr. Ozan (PETITIONER)

v.

State of Anga Pradesh (RESPONDENT)

AND

W.P. No. ____/2017

PEW (PETITIONER)

v.

Governor of Anga Pradesh (RESPONDENT)

**PETITION INVOKED UNDER ARTs. 32 & 136 OF
THE CONSTITUTION OF INDISTAN**

**UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS LORDSHIP'S
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDISTAN**

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LIST OF ABBREVIATIONS

&	And
¶	Paragraph
AIR	All India Reporter
Art.	Article
Co.	Company
FIR	First Information Report
Govt.	Government
Hon'ble	Honorable
ISP	Internet Service Provider
Ltd.	Limited
M.P.	Madhya Pradesh
NGO	Non-Governmental Organization
No.	Number
Ors.	Others
PEW	Participation & Emancipation of Woman
PIL	Public Interest Litigation
QBD	Queens Bench Division
SC	Supreme Court
SCC	Supreme Court Cases

SCR	Supreme Court Reports
SLP	Special Leave Petition
U.P.	Uttar Pradesh
UOI	Union of India
US	United States
v.	Versus

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STATEMENT OF JURISDICTION

I. W.P. No. ____/2017

The petitioner has approached this Hon'ble Court under Art. 32 of the Constitution of Indistan.

II. S.L.P. No. ____/2017

The petitioner has approached this Hon'ble Court under Art. 136of the Constitution of Indistan.

III. W.P. No. ____/2017

The petitioner has approached this Hon'ble Court under Art. 32 of the Constitution of Indistan.

The respondents have appeared to the Hon'ble Supreme Court of Indistan in response to the petitions filed by the petitioners.

STATEMENT OF FACTS

THE CONSTITUTION IS BASED ON THE PRINCIPLES OF 'LIBERAL DEMOCRATIC' GOVERNANCE

The Constitution of Indistan is considered and described as one of the most progressive Constitutions based on the principles of 'liberal democratic' governance. The Constitutional, legal and policy framework of Republic of Indistan are in *pari materia* to the Republic of India.

ANGA PRADESH HAS BEEN GRANTED A SPECIAL STATUS.

Anga Pradesh (A.P.) is inhabited by 13 major tribes, which constitutes the 97 percent population of State. Anga Pradesh has been granted a great degree of state autonomy, as well as special powers and autonomy for tribes to conduct their own affairs.

THE GOVERNOR CITING HIS SPECIAL RESPONSIBILITY UNDER ART. 371-A IS NOT GIVING HIS ASSENT TO THE ORDINANCE.

In January 2017, there was a general election in the State of Anga Pradesh. The political party led by Mr. Yohanan stormed to power winning 57 seats out of a 70 member legislative assembly. Mr. Yohanan approved an ordinance to be promulgated by the Governor of Anga Pradesh seeking immediate implementation of the women reservation to the tune of 33% in the Municipalities. As soon as the news spread of the promulgation, the protest was called. The protests and blockade continued for several weeks which had serious impact on 'law & order' in the state of Anga Pradesh, supply of essential commodities to the State jeopardizing the human life and dignity in worst manner. Thus, the Governor of the State, i.e., Anga Pradesh citing his special responsibility under the Art. 371-A with respect to 'law and order' in the State did not give his assent to the Ordinance. An NGO i.e. PEW preferred a Writ Petition against Governor of Anga Pradesh in a Supreme Court of Indistan under Art. 32 of the Constitution of Indistan seeking a direction for enforcement of provision of Art. 243T of the Constitution of India which would ensure fair representation of womanhood in the political life.

MR. HOBART MAKING SPEECH 'LIVE' THROUGH FACEBOOK USING THE INTERNET SERVICES

Mr. Hobart made a passionate speech on the floor of the House pitching for reform on “women’s participation and while he was making his speech live on the floor of the House, his Smartphone (which has touch-screen feature) got activated and the speech became ‘Live’ through his social media page of Facebook using the internet services (Wi-fi) of the House. The Speaker also got this incident examined by the Ethics Committee of the House. On recommendation of the Ethics Committee of the House, the Hon’ble Speaker suspended Mr. Hobart for six weeks. Later, Mr. Hobart challenged the decision of Hon’ble Speaker as violative of Fundamental Rights and constitutional norms in the and also sought the writ declaring the Rules as unconstitutional which prohibits the ‘Live Telecast’ of proceedings of the business of House as violative of basic feature of the Constitution i.e. Democracy.

TWO MINISTERS WERE ALLEGEDLY CAUGHT ON TELEVISION CAMERA WATCHING PORN ON THE MOBILE PHONE DURING ASSEMBLY PROCEEDINGS.

The Speaker of the Legislative Assembly, Anga Pradesh (A.P.) received a memorandum of complaint from the Leader of Opposition against two minister seeking an investigation into the alleged ‘Porn Gate Scandal’ and demanded an FIR to be registered against the two ministers for playing child pornographic movie. Next day, the Speaker suspended the membership of two ministers and referred the matter to the Ethics Committee of the Assembly to enquire into the alleged ‘Porn Gate’ incident. The Hon’ble Speaker accepted the recommendations of the Ethics Committee in case of two Ministers, i.e., Mr. Savadi & Mr. Ozan. The Hon’ble Speaker, Legislative Assembly of Anga Pradesh directed the Secretary General of the Legislative Assembly to get an FIR registered in the incident against Mr. Savadi. The Speaker categorically authorized the police to conduct the physical search and seizure of the two offices, respective official computers of both the ministers. Later, Mr. Ozan claimed that the evidence obtained as a result should be excluded as it violates the constitutional protection afforded to the members of House in form of ‘Legislative Privileges’ besides the safeguards in Part III of the Constitution of India. Mr. Ozan also challenged the entire proceedings of ‘search & seizure’ in a Writ Petition under Article 226 of the Constitution.

STATEMENT OF ISSUES

- I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDISTAN OR NOT?

- II. WHETHER THE RULES WHICH PROHIBIT THE LIVE TELECAST OF PROCEEDINGS OF THE BUSINESS OF HOUSE IS AGAINST THE BASIC FEATURE OF CONSTITUTION AND THE IMPUGNED ACTIVITIES, I.E., LIVE TELECAST OF SPEECH IS A PART OF ARTICLE 19 OF CONSTITUTION OF INDISTAN OR NOT?

- III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT?

- IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?

SUMMARY OF ARGUMENTS

I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDISTAN OR NOT?

The Council on the behalf of the respondents most humbly submits that the instant petitions are not maintainable before the Hon'ble Court as:

1. The Writ Petition filed before the Hon'ble Supreme Court is not maintainable as the act done by the petitioner was violative of the Rules of the procedure of the House and there was no infringement of Fundamental Right. Moreover, instead of approaching this Court, the petitioner should have approached High Court to challenge the Constitutionality of such Rules.
2. The SLP filed before the Hon'ble Supreme Court is not maintainable as search and seizure was done on contrary to the law and also after obtaining prior permission from the Speaker, hence there was no infringement of Fundamental Rights. The Hon'ble High Court was also correct in law while rejecting this petition.
3. The PIL filed before the Hon'ble Supreme Court is not maintainable as the Governor has been bestowed with Constitutional duty to secure law and order in the State under Article 371-A(1)(b), and hence, no Fundamental Right has been infringed.

II. WHETHER THE RULES WHICH PROHIBIT THE LIVE TELECAST OF PROCEEDINGS OF THE BUSINESS OF HOUSE IS AGAINST THE BASIC FEATURE OF CONSTITUTION AND THE IMPUGNED ACTIVITIES, I.E., LIVE TELECAST OF SPEECH IS A PART OF ARTICLE 19 OF CONSTITUTION OF INDISTAN OR NOT?

The Counsel on the behalf of the state most humbly submits that the Fundamental right of Mr. Hobart is not violated by the Rule of the House that prohibits making of speech '*live*' which is delivered during the session. The Rule is not against Fundamental rights as it falls under the restrictions given under Art. 19(2). The restrictions derive its origin from public order. The restrictions so imposed on him were reasonable in nature and also falls under the ambit of restriction i.e., public order. The restrictions imposed by means of Rules were anticipatory in nature and thus justified. Furthermore, as claimed by Mr. Hobart, the right to know of citizen does not extend in this case as this falls under the exception of public

security. The Counsel has also asserted certain reasons to justify that suspension of Mr. Hobart was justified.

III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT?

The Counsel on the behalf of state humbly submits that the search and seizure as conducted by the police was within the permissible limits of the constitution. The search so conducted by the police was within the ambit of law as Section 80(1) of the Information Technology Act, 2000 allows such search and seizure and moreover, the permission of the Speaker was also sought before such search and hence it provides a color of validity to the procedure so adopted. Moreover, such search and seizure does not violate the right to privacy so guaranteed under the constitution as such deprivation is in accordance of the law. Furthermore, the process of search and seizure does not fall under the ambit of the privileges granted to the members of the House by virtue of Art. 194 of the Constitution. Privileges extend only to the speech or vote given during the session while in the instant case the privileges are claimed for search and seizure. Moreover, such an activity is also illegal in the eyes of law. Hence, the Counsel pleads that the act of the state was justified in the eyes of law.

IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?

The Counsel on the behalf of the State humbly pleads that the Court cannot issue a writ regarding the issue raised by NGO PEW. The state cannot pass the writ as the fair and political representation of women under Art. 243 T is excluded by Article 371-A. Article 371-A excludes any *Act of Parliament* to be implement into the state which has been given special status. Moreover, the reservation policy is violation of customary law and procedure. The news of promulgation of the ordinance resulted into the destruction of law and order and thus in order to maintain such law and order it is the duty of the governor to cancel such an ordinance.

ARGUMENT ADVANCED

I. WHETHER THE INSTANT CASE IS MAINTAINABLE BEFORE SUPREME COURT OF INDIA OR NOT?

It is humbly submitted before the Hon'ble Court that the instant matter is not maintainable before the Court of Law. The petitioner lacks the essential ingredients to maintain the matter before the apex Court. Though the Hon'ble Court has clubbed the matters, yet certain issues regarding maintainability of the case must be highlighted before this Court to prevent any miscarriage of justice.

1. THAT THE WRIT PETITION SUBMITTED BY MR. HOBART IS NOT MAINTAINABLE.

No action lies in the Supreme Court under Art. 32 unless there is an infringement of a Fundamental Right,¹ as the Supreme Court has previously emphasized that "The violation of Fundamental Right is the *sine qua non* of the exercise of the right conferred by Art. 32."² In the given case, it was the act of the petitioner which breached the ethics of the House which consequently attracted suspension, and hence no Fundamental Right has been infringed.

In addition to this, a person acquires a *locus standi*, when he has to have a personal or individual right which has been violated or threatened to be violated.³ Since, no right of petitioner has been infringed, he has no *locus standi* before the Court.

This Hon'ble Court has itself imposed a self-restraint in its own wisdom on the exercise of jurisdiction under Art. 32 where the party invoking the jurisdiction has an effective adequate alternative remedy in the form of Art. 226 of the Constitution, although this Rule is a Rule of convenience and discretion rather than a Rule of law.⁴ But, where writ petition is challenging the Constitutional validity of any provision, then the petitioner should file writ petition before High Court under Art. 226 of the Constitution.⁵

¹ Andhra Industrial Works v. Chief Controller of Imports, AIR 1974 SC 1539.

² Fertilizer Corp. Kamgar Union v. Union of India, AIR 1981 SC 344.

³ Calcutta Gas Co. Ltd. v. State of West Bengal, AIR 1962 SC 1044.

⁴ Mohammed Ishaq v. S. Kazam Pasha, (2009) 12 SCC 748.

⁵ State of West Bengal v. Ratnagiri Engineering Private Limited, (2010) 4 SCC 453.

Moreover, in order to invoke the jurisdiction under Art. 32 of the Constitution to approach this Court directly, it has to be shown by the petitioner as to why the High Court has not been approached, could not be approached or it is futile to approach the High Court. Unless satisfactory reasons are indicated in this regard, filing of petition in such matters directly under Art. 32 of the Constitution is to be discouraged.⁶ Hence, it is submitted that the petition submitted before this Hon'ble Court is not maintainable and thus should be rejected.

2. THAT THE SPECIAL LEAVE PETITION BY MR. OZAN IS NOT MAINTAINABLE.

It is humbly submitted before the Hon'ble Court that the Constitution, by virtue of Art. 136 has not made the Supreme Court a regular Court of Appeal or Court of Error. It only intervenes where justice, equity and good conscience requires such intervention.⁷ The power under Art. 136 is an extraordinary power to be exercised in rare and exceptional circumstances.⁸ The respondents most humbly submit that in this particular case no such special circumstances have occurred that would make this Hon'ble Court exercise its extraordinary power.

Respondent has placed its reliance on the case of *Baldota Brothers v. Libra Mining Works*,⁹ wherein this Court has held that- "*There is no distinction in the scope of the exercise of power under Art. 136 of the Constitution of India at the stage of application for special leave and the stage where the appeal is finally disposed off and it is open to the Court to question the propriety of the leave granted by it even at the time of hearing of the appeal.*" Hence, it is submitted before the Supreme Court that a Special Leave once granted can be subsequently revoked.¹⁰ Therefore, it is open to the Court to question the propriety of the leave granted and to dismiss the appeal without going into the merits if it finds that there was no proper case for granting special leave.¹¹

⁶ Union of India v. Paul Manickam, AIR 2003 SC 4622.

⁷ A.V. Papayya Sastri v. Govt. of A.P., AIR 2007 SC 154.

⁸ Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai, (2004) 3 SCC 214.

⁹ AIR 1961 SC 100.

¹⁰ Tungabhadra Industries v. The Government of Andhra Pradesh, AIR 1964 SC 1372.

¹¹ Bengal Chemical & Pharmaceuticals Works Limited v. Employees, AIR 1959 SC 633.

Moreover, the decision of the High Court is not patently erroneous as it has rightfully dismissed the writ petition on the basis that police had sought due permission from Speaker of the Legislative Assembly.

3. THAT THE PIL FILED BY NGO PEW IS NOT MAINTAINABLE.

Jurisdiction of the Supreme Court under Art. 32 can be invoked only when Fundamental Right has been infringed.¹² No question other than relating to a Fundamental Right will be determined in a proceeding under Art. 32.¹³ Thus, where there is no infringement of Fundamental Right or scope for enforcement of any Fundamental Right, the writ petition is not maintainable on the fragile ground.¹⁴ In the instant matter, no Fundamental Right has been infringed, rather the Governor has performed its Constitutional duty embodied upon him under Art. 371-A.

Moreover, infringement of Fundamental Right cannot be founded on remote of speculative grounds.¹⁵ There is no such action which infringes or poses a threat to Fundamental Right of the citizens. Mere apprehension that the petitioner would be deprived of his Fundamental Right is not enough to invoke the jurisdiction of the Court under Art. 32.¹⁶

Therefore, it is humbly submitted before the Hon'ble Court that the present case is not maintainable and it should be dismissed.

II. WHETHER THE RULES WHICH PROHIBIT THE LIVE TELECAST OF PROCEEDINGS OF THE BUSINESS OF HOUSE IS AGAINST THE BASIC FEATURE OF CONSTITUTION AND THE IMPUGNED ACTIVITIES, I.E., LIVE TELECAST OF SPEECH IS A PART OF ART. 19 OF CONSTITUTION OF INDIA OR NOT?

Part III of the Constitution guarantees the Fundamental Right along with the exception that prevents such right from being an absolute right and Rules fall under reasonable restrictions.

¹² Gopal Das v. Union of India, AIR 1955 SC 1.

¹³ Coffee Bd. v. Joint C.T.O., AIR 1971 SC 870.

¹⁴ Federation of Bar Association in Karnataka v. Union of India, (2000) 6 SCC 715.

¹⁵ Baldev Singh Gandhi v. State of Punjab, AIR 2002 SC 1124.

¹⁶ Magan Bhai v. Union of India, (1970) 3 SCC 400.

1. THAT THERE WAS NO VIOLATION OF FREEDOM OF SPEECH AND EXPRESSION AS IT FALLS UNDER THE RESTRICTION PROVIDED UNDER ART. 19(2) OF THE CONSTITUTION.

It is humbly pleaded before the Court of Law that the State legislature was justified in making of such Rule as the law qualifies being reasonable as it falls under the ambit of one of the restrictions of freedom of speech and expression. It is observed by the Hon'ble Justice Patanjali Shastri that,¹⁷ "*Man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated....*"

(1) THAT THE RULES OF PROCEDURE ARE REASONABLE IN NATURE.

It is pleaded before the Hon'ble Court that the Rule of legislature that prohibits making the speech live is reasonable in its nature. A restriction that promotes directive principles is generally regarded as reasonable i.e. the restriction must receive its reorientation from Directive Principles.¹⁸ In the present case, the restriction indirectly aims to achieve Art. 38 of the Constitution which aims at social order whereas live telecast of speech may result into public instigation destroying the social order. Restrictions imposed due to implementation of Directive Principles may deem to be reasonable.¹⁹ Moreover, in case of striking a balance between rights of an individual to the right of citizens, the former becomes insignificant.²⁰ Since there is no fixed standard for reasonableness, each case must be decided on its own merits²¹ and thus it is pleaded that these merits should be taken into consideration.

(2) THAT THE RULES OF PROCEDURE FALLS UNDER THE EXCEPTION OF PUBLIC ORDER.

It is humbly pleaded before the Court of Law that the restrictions imposed by means of Rules of procedure of the House falls under the

¹⁷ A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

¹⁸ Kasturi Lal Laxmi Reddy v State of J&k., (1980) 4 SCC 1.

¹⁹ State of Bombay v. F.N. Balsara, AIR 1951 SC 318.

²⁰ Sushila Saw Mill v. State of Orissa, (1995) 3 SCC 615.

²¹ Dharam Dutt v. Union of India, AIR 2004 SC 1295.

ambit of one of the restrictions present under Art. 19(2) i.e., *public order*. The apex Court has defined ‘public order’ as “the state of tranquility which prevails among the members of society as a result of internal regulation, enforced by the government which they have established.”²² The state is entitled to curb freedom of speech and expression if it is likely to trigger communal antagonism and hatred.²³ The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbances of the current life of the community so as to amount to a disturbance of the public order or whether it affects merely an individual, being the tranquility of the society undisturbed.²⁴ It is humbly pleaded that the passionate and instigating speeches with malice political intent may lead to enticement to some section of the society and internal disturbance which would affect the public order.²⁵

i. THE SPEECH MADE BY MR. HOBART WAS PASSIONATE ON THE FLOOR OF THE HOUSE.

It is humbly pleaded before the Court of the law that Mr. Hobart who was a veteran legislator made *a passionate speech* on the floor.²⁶ This speech when made live may result into destruction of tranquility of state. Moreover, this restriction qualifies the ground of being rationally proximate and direct²⁷ as the live speech may create a situation of agitation affecting the tranquility of the state.

(3) THAT ANTICIPATORY ACTION HAS HELD TO BE VALID IN RESPECT OF FREEDOM OF SPEECH AND EXPRESSION.

It is humbly submitted before the Court of Law that the Rule framed by the Legislative assembly was anticipatory in nature, i.e., it intended to prevent certain disorder which may arise in future. Moreover, the apex Court has also held that the restriction imposed on anticipation is

²² Ramesh Thapar v. State of Madras, AIR 1950 SC 124.

²³ State of Karnataka v. Dr. Pravin Bhai Thogadia, AIR 2004 SC 2081.

²⁴ Collector & District Magistrate v. S. Sultan, AIR 2008 SC 2096.

²⁵ Brij Bhushan v. State of Delhi, AIR 1950 SC 129.

²⁶ Moot proposition, ¶ 11.

²⁷ O.K Ghosh v. E.X Joseph, AIR 1963 SC 812.

valid in respect of freedom of speech and expression.²⁸ Further on, the maxim *Abundans Cautela Non Nocet*,²⁹ i.e., there is no harm in being cautious will also find its applicability. Thus, the Rules framed by the Legislative Assembly held not to be violative of freedom of speech and expression.

2. THAT THE CIRCUMSTANCE DOES NOT ATTRACT THE PROVISION OF RIGHT TO KNOW.

It is humbly pleaded before the Hon'ble Court that the right to know cannot be claimed in the instant case. The right to know, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can; at any rate have no repercussions on *public security*.³⁰ Moreover it is pleaded that in this the claim of right to know depends upon the criteria of national importance *vis-à-vis* administration of justice should be the criteria for determining the claim.³¹ The claim has to be based on the public interest.³² Since the effect on the said right is remote or indirect, the validity of such law cannot be successfully challenged.³³ The making of speeches related to business of the House may include confidential matters and thus may result into a danger to security of the country.

3. THAT THE SUSPENSION WAS JUSTIFIED.

It is submitted that the suspension of six weeks from the Assembly was justified under breach of Rules of the procedure of the House as it was correct in law. Art. 208(1) of the Constitution of India authorizes a House of the Legislature of a State to make Rules for regulating its procedure and conduct of its business. The decision of suspension was taken according to the Rules of procedure of the House which has been validated by the Constitution itself. Moreover, when there is a case of disqualifying provisions, the latter should be construed strictly with reference to the words used therein,³⁴ hence the decision of suspension was correct.

²⁸ Virendra v. State of Punjab, AIR 1958 SC 896.

²⁹ Gokaraju Rangaraju v State of Andhra Pradesh, AIR 1981 SC 1473.

³⁰ State of U.P v. Raj Narain, AIR 1975 SC 865.

³¹ Ibid.

³² Peoples Union for Civil Liberties v. Union of India, AIR 2004 SC 1442.

³³ AkadasiPadhan v. State of Orissa, AIR 1963 SC 1047.

³⁴ Associated Cement Co. Ltd. v. Workmen, AIR 1960 SC 56.

III. WHETHER THE SEARCH AND SEIZURE AS CONDUCTED BY POLICE IS WITHIN THE PERMISSIBLE LIMIT OF CONSTITUTION OF INDISTAN AND PROCEDURE PRESCRIBED BY LAW OR NOT?

It is humbly submitted before the Court of Law that the search and seizure as conducted by the police is within the permissible limits of the Constitution of Indistan and procedure prescribed by the law.

1. THAT THE INFORMATION OBTAINED BY POLICE CONSTITUTES A 'SEARCH' PRESCRIBED BY LAW.

It is humbly submitted before the Court of Law that the information obtained by the police from the Internet Service Provider definitely constitutes a legal 'search' prescribed by law.

(1) THAT THE INVESTIGATION PROCEEDINGS WAS WITHIN THE AMBIT OF 'SEARCH'.

Section 80(1) of the Information Technology Act, 2000 authorizes any police officer above the rank of a Deputy Superintendent of Police to enter any public place to *search* and arrest without warrant any person who is reasonably *suspected of having committed or of committing or of being about to commit* any other offence under this Act, and Section 67B(b) of the Information Technology Act, 2000 clearly makes the act of collecting, seeking, browsing, downloading, advertising, promoting, exchanging or distributing material in any electronic form depicting children in obscene or indecent or sexually explicit manner, punishable under the Act. In the instant case, the petitioner was involved in watching child pornography during the House proceedings and thus such act would attract the provisions of the IT Act, 2000 and hence, search conducted by police was valid in law.

(2) THAT THE 'SEARCH AND SEIZURE' DID NOT VIOLATE RIGHT TO PRIVACY.

If the legislative assembly has powers, privileges and immunities of the House of commons and the petitioner is eventually deprived of his personal liberty, such deprivation will be in accordance with the procedure established by the law and the petitioner cannot complain of

the breach of his Fundamental Rights.³⁵ In the instant case also, the deprivation of privacy is in accordance to the procedure established by law.

- i. THAT THE SEARCH AND SEIZURE FALLS WITHIN THE PURVIEW OF 'PROCEDURE ESTABLISHED BY LAW'.

It is humbly pleaded that 'procedure' means the manner and form of enforcing the law.³⁶ The procedure that is being followed must be just, fair and reasonable.³⁷ In the instant case also, it has been proved that the search conducted by police was valid in law. Moreover, the Speaker is also duly authorized to order for search and seizure³⁸ and thus it clearly falls within the purview of 'due procedure established by law' under Art. 21 and the manner of enforcing the law is fully justified in the instant case. Moreover, the Court has made it clear that the members of the legislature are as much liable under a valid detention as other citizens.³⁹ The Court also held that the power of search and seizure is an 'overriding power of the state for the protection of social security' and it is necessarily regulated law.⁴⁰

Thus, since in the instant case the procedure is established by law, so there is no proximity of violation of Art. 21, i.e., Right to Privacy of Mr. Ozan in the given case.

2. THAT THE SEARCH AND SUBSEQUENT SEIZURE IS NOT EXCLUDED DUE TO THE LEGISLATIVE PRIVILEGES.

It is humbly pleaded before the Court of Law that the search and subsequent seizure is not excluded due to legislative privilege.

- (1) THAT THE ACTIVITY WAS NOT GOING TO HINDER THE FUNCTION OF THE HOUSE.

³⁵ MSM Sharma v. Shrikrishna Sinha, AIR 1959 SC 395.

³⁶ Gopalan v. State of Madras, (1950) SCR 88.

³⁷ Maneka Gandhi v. UOI, AIR 1978SC 597.

³⁸ Harendra Nath Barua v. Dev Kanta Barua, AIR 1958 Assam 160.

³⁹ K Anandan Nambiar v. Chief Secretary, AIR 1966 SC 657.

⁴⁰ Boyd v. United States, 116 US 616; Justice K S Puttaswamy (Retd.) and Anr. v. Union of India, Writ Petition (Civil) No. 494 of 2012 (Supreme Court, 24/08/2017).

It is humbly pleaded in the Court of Law that the privileges are available only insofar as they are necessary in order that the House may freely perform its functions but do not extend to the activities undertaken outside the House on which the legislative provisions would apply without any differentiations.⁴¹ In the present case search and seizure of the office of Mr. Ozan is in no way a necessary act in order that the House may freely perform its functions and thus this act can never come under the purview of 'legislative privileges' as claimed by Mr. Ozan.

(2) THAT THE LEGISLATIVE PRIVILEGES DO NOT EXTEND TO THE SEARCH AND SEIZURE.

Art. 194 (2) says, 'no member of the legislature of a state shall be liable to any proceedings in any Court in respect to anything said or any vote given by him in the legislature or any committee thereof, and no person shall be liable in respect of the publication by or under the authority of a House of such legislature of any report, paper, vote or proceedings.' The maxim *Inclusio Unius Exclusio Alterius*, i.e., inclusion of one excludes other will also find its applicability as the specific inclusion of "anything said" and "any vote given" excludes other acts done.

Search and seizure does not fall within the purview of this article because the article simply protects 'anything said' and 'any vote given' and not 'any act done' in the course of Parliamentary proceedings. Thus, Mr. Ozan is liable to any ordinary course of proceedings which was ordered by the speaker of the House and therefore the search and seizure that was conducted by the police is justified. Legislative privilege is not inclusive of immunity in this case.

(3) THAT WATCHING CHILD PORNOGRAPHY IN THE PREMISES OF STATE LEGISLATURE WAS ILLEGAL IN THE EYES OF LAW.

⁴¹ Justice RipusudanDayal (Retd.) and Ors. v. Respondent: State of M.P. and Ors., AIR 2014 SC 1335.

It is humbly pleaded before the Court that Mr. Ozan was watching porn in the premise of the state legislature. Child pornographic movies has been banned by the Hon'ble Supreme Court of Indistan.⁴² Thus, his indirect involvement in browsing porn website on Mr. Savadi's mobile phone is a clear indication that he was committing an offence within the premise of the State legislature. Search and seizure in pursuance to an offence is a legal act and not an offence in itself because there were due reasons to believe that an offence was being committed by the petitioner in the legislative assembly.

- (4) THAT THE SPEAKER WAS AUTHORIZED TO ORDER SEARCH AND SEIZURE.

The Speaker as the chief custodian of the powers and privileges of a state legislature is not merely the Constitutional head of the legislature, but also the chief functionary thereof. He would not take notice of the alleged contempt or breach of privilege except where it is committed in the House itself, provided the matter is brought to his notice in due course by a regular complaint instituted by any of the members of the House but there is nothing to prevent him from taking notice of such contempt or breach of privilege where the offending application and has attracted his attention and then set the House and machineries in motion for an appropriate action against the offender.⁴³ Moreover, the House has exclusive right of being the exclusive judge of the legality of its own proceedings.⁴⁴ In the present case also, the complaint has been duly brought to the Speaker from the Leader of opposition against two minister seeking an investigation into the alleged 'porn gate scandal'.

- (5) THAT THE VALIDITY OF ANY PROCEEDINGS SHALL NOT BE CALLED UPON IN QUESTION IN THE COURT.

Art. 212 of the Constitution of India states that the validity of any proceedings in the Legislature of a state shall not be called in question

⁴² Moot Proposition, ¶ 16.

⁴³ Supra 38.

⁴⁴ Brad laugh v. Gossett, (1824) 12 QBD 271.

on the ground of any alleged irregularity of procedure.⁴⁵ No officer or member of the legislature of a state in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.⁴⁶ Thus, any proceedings in the present case cannot be questioned in the Court of Law.

IV. WHETHER THIS COURT CAN PASS AN APPROPRIATE WRIT TO THE STATE IN THE PETITION AND ISSUES RAISED BY NGO PEW SEEKING ENFORCEMENT OF ARTICLE 243T TO THE EXTENT OF RESERVING ONE-THIRD OF TOTAL NUMBER OF SEATS TO BE FILLED BY DIRECT ELECTION IN EVERY MUNICIPALITY FOR WOMAN OR NOT?.

It is humbly pleaded before the Court of Law that in the instant matter the Court cannot issue a writ to the state regarding In the Petition and Issues raised by NGO PEW Seeking Enforcement of Art. 243T to the extent of reserving one-third of total number of seats to be filled by direct election in every municipality for woman.

1. THAT FAIR POLITICAL REPRESENTATION OF WOMAN UNDER ART. 243T IS EXCLUDED BY ART. 371-A(1)(a).

It is humbly submitted before the honorable Court that the Court cannot pass writ to the state in the petition and issues raised by NGO PEW seeking enforcement of Art. 243T to the extent of reserving seats for women because the Constitutional provision of Art. 371-A excludes the Constitutional provision of Art. 243T.

(1) THAT ART. 371-A PROHIBITS THE ENFORCEMENT OF ART. 243T.

It is humbly pleaded before the honorable Court that Art. 371 which says that “no act of Parliament in respect of (ii) Naga customary law and procedures shall apply to the state of Nagaland”, excludes even Art. 243T of the Constitution. Art. 371-A is a special provision, Art. 243T, being an act of Parliament, shall take away or abridge the special status that has been given to the state under this Art. 371-A of the

⁴⁵ Art. 212 (1), the Constitution of India.

⁴⁶ Art. 212 (2), the Constitution of India.

Constitution itself contemplates a different treatment of these tracts and the differences are justified by the vast differences between the needs of social conditions in Nagaland and the various stages of development of different parts.⁴⁷ We do not, therefore, consider that a comparison of these Rules leads to any conclusion that there is likelihood of discrimination which would offend the Constitution.⁴⁸ Thus, these special provisions are not discriminatory in nature per se but any interference with these provisions shall definitely result into discrimination. The principle of 'equality before the law' does not require absolute equality or equality among the unequal.⁴⁹ Therefore, the principle under Art. 243T might be applicable on other states, it cannot be applied to the state that has been talked about under Art. 371-A because Art. 371-A is special in nature and the laws under it are not discriminatory rather reasonably classified⁵⁰ which prohibits other acts of the Parliament. Also, according to *Generalia Specialibus Non Derogant*, i.e., general enactment is not intended to interfere with the special provision, and thus Art. 243T shall have no applicability being a general provision.

(2) THAT RESERVATION POLICY IS VIOLATING THE CUSTOMARY LAW AND PROCEDURES.

It is humbly pleaded before the Honorable Court that the reservation policy as under Art. 243T shall violate the customary law and procedures as provided under Art. 371-A of the Constitution. The tribal leaders saw this attempt by the present Govt. led by Mr. Yohanan as serious interference with the tribal customary law and procedures.⁵¹ Therefore, in the present case, there must be strict interpretation of Art. 371-A and customary laws and procedures must be followed in its true spirit and reason. Where the liberty of a subject is concerned, the statutes prejudicially affecting such liberty must be strictly interpreted.

⁴⁷ State of Nagaland v. Ratan Singh, etc., AIR 1967 SC 212.

⁴⁸ Ibid.

⁴⁹ Devadasan v. UOI, AIR 1964 SC 179.

⁵⁰ Budhan v. State of Bihar, AIR 1955 SC 191.

⁵¹ Moot problem ¶ 7.

The power can be exercised only in the manner and according to the procedure laid down by the law.⁵²

2. THAT DENIAL OF GOVERNOR'S ASSENT UNDER ART. 371-A(1)(b) FOR ORDINANCE WAS JUSTIFIED.

It is submitted before the Hon'ble Court that the Governor of the Anga Pradesh did not give his assent to the Ordinance which would have facilitated 33% reservation to the women in the Municipalities as he has been given special responsibility under Art. 371-A(1)(b) to maintain law and order in the state.

(1) THAT THE GOVERNOR CAN EXERCISE DISCRETIONARY POWER WHICH SHALL BE FINAL IN NATURE.

Under the Cabinet system of Government, the Governor is the Constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion,⁵³ and Art.371-A(1)(b) of the Constitution clearly specifies that the Governor can exercise his individual judgment in his own discretion which shall be final and cannot be taken into the Court of Law for consideration.

i. THAT THE GOVERNOR CAN EXERCISE HIS FUNCTION ON HIS OWN DISCRETION.

Art. 163(1) states that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution, required to exercise his functions or any of them in his discretion, and into those matters, Art. 163(2) clearly specifies that the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he

⁵² State of Uttar Pradesh v. Lalai Singh Yadav, 1977 SCR (1) 616.

⁵³ Samsher Singh v. State of Punjab and Anr., AIR 1974 SC 2192.

ought or ought not to have acted in his discretion.⁵⁴ Hon'ble *Sarkaria J.* said that the necessity of immediate action and of promulgating the ordinances is a matter purely for the subjective satisfaction of the Governor.⁵⁵ Subjective satisfaction of the Governor means his personal satisfaction about the existence of necessity.⁵⁶ Hence, there are exceptions under which the Governor can act in his own discretion and it is also recognized that there may be situations where by reason of peril to democracy or democratic principles an action may be compelled which from its nature is not amendable to Ministerial advice.⁵⁷ Therefore, the decision of the Governor cannot be questioned in the Court of Law.

(2) THE GOVERNOR HAS SPECIAL RESPONSIBILITY WITH RESPECT TO LAW AND ORDER IN THE STATE.

In the given case, protests and blockade went for several weeks, supply of essential commodities was ceased, which in turn was affecting human life and these event also led to the death of seven protesters, which in turn worsened the law and order situation in the State. Art. 371-A(1)(b) of the Constitution entrusts the Governor with special responsibility to check the law and order in the State. Since such tragic events, i.e., the protest and blockade which continued for several weeks⁵⁸ were due to the proposed Ordinance, Governor was bound to exercise his power prescribed under Art. 371-A (1) (b).

(3) THAT DENIAL OF ASSENT TO THE ORDINANCE BY THE GOVERNOR WAS JUSTIFIED.

The Proviso clause of Art. 371-A (1) (b) clearly specifies that validity of anything done under this sub-clause shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment; and in the instant case, the Governor did

⁵⁴ *Pu Myllai Hlychho and Ors. v. State of Mizoram and Ors.*, AIR 2005 SC 1537.

⁵⁵ *S.K.G Sugar Ltd v. State of Bihar*, AIR 1974 SC 1533.

⁵⁶ *State of Punjab v. Satya Pal Dang*, AIR 1969 SC 917.

⁵⁷ *Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh and Ors.*, AIR 2005 SC 1537.

⁵⁸ Moot proposition, ¶ 8

not give his assent to the Ordinance to restore the law and order situation in the State as the promulgation of Ordinance, solely, resulted in the deterioration of law and order.

3. THAT THE PROMULGATION OF ORDINANCE WAS NOT JUSTIFIED.

It is humbly submitted before the Hon'ble Court of Law that the promulgation of Ordinance was prima facie irrational and does not possess any legal importance.

(1) THERE WERE NO EXIGENCIES TO PROMULGATE ANY ORDINANCE.

It is humbly submitted before the Court of Law that the Ordinance so promulgated by the Govt. was simply a misuse as there was no emergency rather the end of such an act was only a political gain. The legislative intent of the framers of Constitution was to deal with any *particular situation which may suddenly and immediately arise*.⁵⁹ The Supreme Court has also held that it is necessary *to meet urgent situation for promulgation* of any Ordinances.⁶⁰ The Ordinance-making power was meant to "*tide over*" an emergent situation.⁶¹

(2) THAT THE ORDINANCE CANNOT BE A PARTY SLOGAN.

It is also submitted before the Hon'ble Court of Law that Mr. Yohanan and his political manifesto promised implementation of Part XI A of the Constitution and based on such a cause, promulgation of an Ordinance cannot be justified. He promised to bring suitable law within a period of six months⁶² and for fulfillment of such a promise by the Govt., the significant provision of Ordinance cannot be used. The Court should not allow an Ordinance which is *perverted for political ends*.⁶³ Thus, the Court should reject the Ordinance by which the enforcement of Art. 243T is sought by the Government.

⁵⁹ Constituent Assembly Debates by Dr. B.R Ambedkar, *Draft Constitution*, Constitution Hall, New Delhi (23/05/1949).

⁶⁰ A.K Roy v. Union of India, AIR 1982 SC 710.

⁶¹ R.K. Garg and Ors. v. Union Of India (UOI) And Ors, (1981) 4 SCC 675.

⁶² Moot Proposition, ¶ 7.

⁶³ D.C. Wadhwa v. State of Bihar, AIR 1987 SC 579.

PRAYER

Wherefore, in the light of the legal precedents and principles cited;and in light of the provisions of the Constitution applied and arguments advanced; it is most humbly pleaded before the Hon'ble Court that this Court adjudges and declare that:

- ❖ The Rules prohibiting 'live telecasts' of Proceedings of House should not be held unconstitutional.
- ❖ The suspension of Mr. Hobart should be held valid.
- ❖ The search and seizure conducted by police should be held as according to procedure established by law.
- ❖ The denial of assent to the Ordinance by the Governor under Article 371-A must be held valid in the eyes of law.

And pass any other order, direction, or relief that it may deem fit in the best interests of justice, fairness, equity and good conscience.

ALL OF WHICH IS MOST RESPECTFULLY SUBMITTED.

COUNSEL FOR THE RESPONDENT